

Exhibit 32

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COPY

SUSANNA MIRKIN AND BORIS MIRKIN,
Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

Case No.

vs.

18 Civ. 2949 (ARR) (RER)

XOOM ENERGY, LLC and XOOM
ENERGY NEW YORK, LLC,

Defendants.

DEPOSITION OF PATRICIA KULESA

Conducted virtually via remote videoconference

June 29, 2022

Reported by:
Misty Klapper, RMR, CRR

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1 customers that rates were too high?

2 A. Most times it was billing. It was
3 tagged as a billing complaint.

4 Q. What do you mean by it was tagged as
5 a billing complaint?

6 A. The customer's inquiry was specific
7 to their billing.

8 Q. So without speaking to the customer
9 or reading what they submitted, you couldn't
10 really tell the exact substance of the complaint;
11 is that fair to say?

12 MS. WIZIG: Objection, form.

13 THE WITNESS: It's okay to answer?

14 MS. WIZIG: Yes, it's okay.

15 THE WITNESS: It would really boil
16 down to the investigation.

17 In many cases the billing
18 complaints are due to increased usage.

19 BY MR. ROMAN:

20 Q. Were you aware of any complaints
21 that -- of customers saying that XOOM's rates
22 were too high?

23 A. Over my tenure of this position, yes,
24 there have been complaints where somebody
25 complains about the rate; however, most times

1 that is due to the customer failing to renew.

2 Q. When you say the customer failing to
3 renew, what does that mean?

4 A. Customers who enroll with XOOM Energy
5 on a fixed rate contract go through an expiration
6 period. Prior to that expiration, they receive
7 one or two, depending upon the market rules,
8 renewal notices.

9 Those renewal notices advise the
10 customer when they would need to contact XOOM,
11 which is prior to the expiration of the contract,
12 to lock into another fixed rate plan or their --
13 their contract at expiration would default.

14 In some cases it may default to a
15 fixed rate plan. In some cases it may default to
16 a variable rate plan.

17 If they fail to respond to the
18 renewal notice, the default then kicks in at
19 contract expiration.

20 Q. In New York how many renewal notices
21 did customers receive?

22 A. One.

23 Q. In New York did customers -- withdraw
24 that.

25 And you said in some cases a customer

1 could default to a fixed rate plan and in other
2 cases they could default to a variable rate plan.

3 Was that a market-specific
4 determination?

5 A. Yes.

6 Q. In New York what would customers
7 default to if they failed to renew?

8 A. I believe a variable rate.

9 Q. So in your experience, most of the
10 complaints from New York customers about rates
11 being too high would have been someone who was on
12 a fixed rate plan and then defaulted on -- then
13 defaulted to a variable rate plan; is that right?

14 A. No. That's -- that's an example.
15 Without going through the actual complaint data,
16 I can't say that was most of them.

17 Again, the reasons vary. It could be
18 increased usage.

19 Q. Did New York require customers who
20 did not -- I'll withdraw that question.

21 With customers that were on a fixed
22 rate and failed to renew that were then defaulted
23 into a variable rate, why did XOOM default those
24 customers to a variable rate?

25 A. That was in the contract terms.

1 Would that letter of assignment also
2 have been located in XOOM's records with the
3 other documents we mentioned earlier?

4 A. The sample document?

5 Q. Along with, for instance, the
6 customer's terms and conditions and other
7 documents related to his complaint, would the
8 letter of assignment have been stored in the same
9 location?

10 A. What this is referring to is the
11 letter of assignment that was sent out to all
12 Planet Energy customers by Planet Energy. So we
13 had the template for those letters. And that is
14 the sample that we would have attached to this.

15 Q. Thank you.

16 So then it goes on in the next
17 paragraph, quote, On July 10, 2013, XOOM sent a
18 notice of renewal to the customer, end quote.

19 Would the notice of renewal have been
20 stored with the other documents relating to this
21 customer's XOOM account?

22 A. Yes.

23 Q. So it goes on to say, quote, The
24 notice of renewal informed him that his contract
25 was going to expire on September 8, 2013 and

1 provided him with XOOM's fixed rate options. The
2 renewal notice further informed the customer that
3 he should -- should he not contact XOOM by
4 August 24, 2013 regarding his renewal, he would
5 automatically default to XOOM's basic variable
6 rate product, end quote.

7 So this is -- earlier when you were
8 talking about the notice of renewal and the terms
9 and conditions, telling customers what they would
10 default to, that's what this passage is referring
11 to; is that right?

12 A. Correct.

13 Q. During your tenure, were New York
14 fixed rate customers who did not respond to a
15 notice of renewal always defaulted into a
16 variable rate product?

17 A. I believe so.

18 Q. The fourth paragraph, second
19 sentence, quote, For customers who wish to have
20 some stability in their rates, XOOM does offer
21 fixed price products and could do the same for
22 the consumer, end quote.

23 Do you see that?

24 A. Yes.

25 Q. So this customer was originally in a

1 fixed rate product, right?

2 A. Correct.

3 Q. Why didn't XOOM have fixed rate
4 customers defaulted into new fixed rate products?

5 MS. WIZIG: Objection, form.

6 You can answer.

7 THE WITNESS: It's my understanding
8 that that is a regulatory requirement. So
9 the commission actually regulates what
10 default products can be.

11 BY MR. ROMAN:

12 Q. Back to paragraph three where it says
13 he would automatically default to XOOM's basic
14 variable rate product, what does the basic
15 variable rate product mean?

16 A. That is a month-to-month variable
17 rate plan.

18 Q. Is there a difference between -- I
19 guess -- withdraw that.

20 Are there variable products that were
21 not basic products?

22 A. I really think this is just the way
23 that it is worded. XOOM Energy has a variable
24 rate plan that they named SimpleFlex and that a
25 customer can enroll on that SimpleFlex plan, just

1 the way they can a fixed rate plan.

2 And I just believe that basic
3 variable rate product is just marketing's way of
4 saying it's just a variable rate plan. They are
5 not naming it the same as the enrolling variable
6 rate plan, which would have been SimpleFlex.
7 With the month-to-month plan, the customer can
8 drop at any time with no penalty.

9 Q. So after Ms. Guida sent this to you,
10 you have no reason to think that you would not
11 have reviewed this, right?

12 A. Correct.

13 Q. And then would Ms. Guida have handled
14 sending on the final version and whatever
15 attachments to the Attorney General office?

16 A. No. Since this was an Attorney
17 General complaint, she would have provided this
18 to our associate counsel, who would submit it.
19 We did not respond directly to Attorney General
20 complaints. We let that go through the legal
21 department.

22 Q. Okay. And if it was a public utility
23 commission complaint, would your team have
24 responded directly to that?

25 A. Yes.

1 category. Legal settlements would fall under
2 any -- anytime that a legal matter was brought
3 forth and we needed to provide information to the
4 legal team for resolution of that.

5 Q. Down here in row 101, Re-Rates Due to
6 Billing Issue, and then in parentheses, PPL, what
7 does that mean?

8 A. So at one point in XOOM's history we
9 did not have the RevenueManager platform. All of
10 our customer transactions were processed through
11 a company that is named PPL.

12 And what this signifies was where we
13 needed to re-rate customers because PPL
14 experienced some type of billing issue. And
15 that's -- that pretty much sums that up.

16 Q. Then we've got row 105. It says
17 Comments on Customer Refunds.

18 Who wrote these customer refund
19 comments?

20 A. This would more than likely have been
21 completed by me, based upon review of the
22 specialist's notations and summary reports, just
23 to give senior management a kind of a high-level
24 summary regarding customer refunds.

25 Q. Here in row 97 we've got Re-Rates Due

1 to Internal Issue.

2 What is that referring to?

3 A. That would be that a re-rate needed
4 to be accomplished because something broke on our
5 side. So either a price change got sent to the
6 utility later than it should have. That's one
7 example. There was a system issue and a bill
8 window was missed, which would delay the billing
9 by the utility for a particular customer. So
10 those indicate re-rates that really stem from
11 some process issue that was broken on the XOOM
12 Energy side.

13 Q. Okay. Here in row 106 we've got
14 Weekly Trends.

15 Do you see that?

16 A. Yes.

17 Q. Did you write the weekly trends
18 entries?

19 A. This -- this section would have
20 either been summarized by me or by one of the
21 specialists on the team during this time that had
22 a little bit more experience. So a more senior
23 person but does not have the title of senior
24 person. So it would be either me or that other
25 person.

1 soon enough.

2 A lot of customers do not understand
3 that we do not have any -- any jurisdiction over
4 when they are returned to the utility. We simply
5 put the transaction in and the utility determines
6 the return date. So we do see complaints around
7 that quite often.

8 Most customers feel once they call
9 in, you should drop them and it should be
10 tomorrow. They don't realize what's involved
11 with the utility.

12 Q. With the customers who came over from
13 Planet Energy with the renewal notice and the
14 renewal process, that worked the same as with all
15 the other customers who didn't come from Planet
16 Energy, right?

17 So in other words -- in other words,
18 Planet Energy customers who did not respond to a
19 renewal notice in New York were also defaulted
20 into variable plans, right?

21 A. Again, it -- it would be what was
22 specifically stated in the contract originally
23 for the renewal. But if the original
24 documentation said upon, you know, failure to --
25 failing to renew you will default to a variable

1 rate, then yes, they would -- they would follow
2 suit just like a XOOM Energy account that had
3 that documentation would as well.

4 Q. Column DY here starts with Compliance
5 saw a first. Only one complaint received for the
6 New York market with an exclamation mark.

7 So typically New York had more than
8 one complaint per week, right?

9 A. You would have to make that
10 comparison by looking at the statistics further
11 up the spreadsheet. That would show you the
12 history of complaints by state. But based upon
13 the timing here -- you know, this was when XOOM
14 Energy was in multiple markets, so you would
15 receive complaints for almost every market.

16 Q. This says only one complaint, right?

17 A. It says only one there, yes.

18 Q. So, I mean, the conclusion -- logical
19 conclusion is that usually there's more than one
20 complaint, right?

21 A. Again, that's very well highlighted
22 in the upper section of this -- this document
23 because it does break it down by state.

24 Q. All right. I'm going to close that
25 spreadsheet. And now I'm going to put in

CERTIFICATE OF REPORTER

I, MISTY KLAPPER, the officer
before whom the foregoing deposition was
taken, do hereby certify that the witness
whose testimony appears in the foregoing
deposition was duly sworn by me; that the
testimony of said witness was taken by me
in shorthand and thereafter reduced to
typewriting by me; that said deposition is
a true record of the testimony given by
said witness; that I am neither counsel
for, related to, nor employed by any of
the parties to the action in which this
deposition was taken; and, further, that I
am not a relative or employee of any
attorney or counsel employed by the
parties hereto, nor financially or
otherwise interested in the outcome of
this action.

A handwritten signature in blue ink that reads "Misty Klapper". The signature is fluid and cursive, with the first name "Misty" and last name "Klapper" clearly distinguishable.

Misty Klapper, RMR, CRR
and Notary Public